

**OCT 18 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****JESUS M. ESCOBAR,****Petitioner - Appellant,****v.****STEVEN CAMBRA, Warden,****Respondent - Appellee.****No. 04-16263****D.C. No. CV-01-02852-CW****MEMORANDUM\***

**Appeal from the United States District Court  
for the Northern District of California  
Claudia Wilken, District Judge, Presiding**

**Submitted October 11, 2005\*\***

**Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.**

California state prisoner Jesus M. Escobar appeals pro se the district court's denial of his 28 U.S.C. § 2254 habeas petition challenging his conviction for first degree murder and personal firearm use. We have jurisdiction pursuant to

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

28 U.S.C. § 2253, and we affirm.

Escobar contends that his appellate counsel provided ineffective assistance by failing to include certain claims in Escobar's discretionary appeal to the California Supreme Court. Because a defendant cannot be deprived of effective assistance of counsel where no constitutional right to counsel exists, we conclude that the California Supreme Court's decision denying this claim was neither contrary to, nor an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982) (per curiam).

**AFFIRMED.**